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Other Income under Tax Treaties
An Analysis of Article 21 of the OECD Model Convention

BY ALEXANDER BOSMAN

Bilateral tax treaties are often, to a greater or lesser extent, based on the OECD Model Convention. Among the distributive rules with respect to taxation of income which are laid down in Chapter III of that model, Article 21 assigns the tax jurisdiction in respect of “other income” – understood to mean items of income which are not dealt with in other provisions of the tax treaty – to the residence state in accordance with the main rule underlying the OECD Model, thus ensuring that no income falls outside the scope of the treaty.

This study provides a comprehensive analysis of Article 21 of the OECD Model. In extensive detail, and with reference to case law from a number of jurisdictions and to statements of various authorities and official documents, the author shows how Article 21 operates in relation to the other distributive rules of the OECD Model and bilateral tax treaties based thereon. The analysis considers such items of income as the following in relation to Article 21:

- income from immovable property;
- business profits;
- profits from shipping, inland waterways transport, and air transport;
- dividends, interest, and royalties;
- capital gains; and
- income from employment.

In addition, the author examines the significance of the OECD Commentaries for the interpretation of tax treaties, the “other income” article in other model conventions, and notable deviations from Article 21 among bilateral tax treaties. An appendix offers well-grounded recommendations on how to potentially amend the wording of Article 21 and the related commentary and how the application of the article can be improved.

Although underexposed in the tax law literature heretofore, the “other income” article raises important international taxation issues that remain problematic or unresolved. Tax lawyers, government officials, and other interested professionals will find here a penetrating analysis that goes a long way towards clarifying the characterisation of income that resists the standard categories defined in tax treaties.

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